IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2429 OF 2005

Shri Tukaram Raghoba Balkawade ..Petitioner.

Versus

Shri Shantaram R. Balkawade & Ors. ..Respondents.

Mr. Mandar V. Limaye for the Petitioner.

CORAM : S. A. BOBDE, J.

DATED : 05TH JULY, 2005.

P.C.:

1. The petitioner has challenged the order dated 16th September, 2004 by which his application under Order 39 Rule 11 of the C.P.C., for striking out the Respondents defence has been rejected.

2. The petitioner's contention before the trial court was that the respondent has constructed two rooms and a tin shed after an order, restraining him from doing so, which was passed on 10th of June, 2003.

According to the petitioner this construction in survey No. 27/1/3/2 appears to be in existence on the said survey number in view of the petitioner's admission in his cross- examination that the respondent No.2 Namdeo has been residing in the said survey number prior to the filing of the suit. Even the perusal of the photographs shows that the construction of the house appears to be old and not new as observed by the trial court vide para 7 of the order.

3. In the circumstances, the order does not suffers from any infirmity jurisdictional or otherwise. Needless to say that this order shall not affect the decision of the appeal on merits.

4. The petition is dismissed.

05.07.2005 (S.A.BOBDE,J.)

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